

WILLIAM A. ISAACSON (*Pro hac vice*)  
(wisaacson@bsfllp.com)  
STACEY K. GRIGSBY (*Pro hac vice*)  
(sgrigsby@bsfllp.com)  
NICHOLAS A. WIDNELL (*Pro hac vice*)  
(nwidnell@bsfllp.com)  
BOIES SCHILLER FLEXNER LLP  
1401 New York Avenue, NW, Washington, DC 20005  
Telephone: (202) 237-2727; Fax: (202) 237-6131

RICHARD J. POCKER #3568  
(rpocker@bsflp.com)  
BOIES SCHILLER FLEXNER LLP  
300 South Fourth Street, Suite 800, Las Vegas, NV 89101  
Telephone: (702) 382-7300; Fax: (702) 382-2755

DONALD J. CAMPBELL #1216  
(djc@campbellandwilliams.com)  
J. COLBY WILLIAMS #5549  
(jcw@campbellandwilliams.com)  
CAMPBELL & WILLIAMS  
700 South 7th Street, Las Vegas, NV 89101  
Telephone: (702) 382-5222; Fax: (702) 382-0540

*Attorneys for Defendant Zuffa, LLC, d/b/a  
Ultimate Fighting Championship and UFC*

[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Cung Le, Nathan Quarry, Jon Fitch, Brandon Vera, Luis Javier Vazquez, and Kyle Kingsbury on behalf of themselves and all others similarly situated.

## Plaintiffs.

V.

Zuffa, LLC, d/b/a Ultimate Fighting  
Championship and UFC.

### Defendant

Case No.: 2:15-cv-01045-RFB-(PAL)

**JOINT MOTION REGARDING  
PROTECTIVE MEASURES FOR  
THE CLASS CERTIFICATION  
AND SUMMARY JUDGMENT  
HEARING**

1 Defendant Zuffa, LLC (“Zuffa”) and Plaintiffs (collectively, the “Parties”) respectfully  
2 submit these proposals for measures to protect highly confidential and trade secret materials  
3 during the December 14, 2018 hearing on Plaintiffs’ Motion for Class Certification and Zuffa’s  
4 Motion for Summary Judgment. To effectively present their arguments, it may be necessary for  
5 both Plaintiffs and Zuffa to refer to material that has been designated as confidential or highly  
6 confidential at times throughout the hearing. The Revised Stipulation and Protective Order, ECF  
7 No. 217, (“Protective Order”) does not cover hearings on dispositive motions. ECF No. 217 ¶ 13.  
8 However, the Protective Order provides that the “parties shall meet and confer in advance of such  
9 proceedings and seek the guidance of the Court as to appropriate procedures to govern such  
10 proceedings.” On December 12, 2018, counsel for the parties participated in a meet and confer  
11 conference and discussed their respective positions on the appropriate procedures. Although the  
12 parties reached agreement on certain items, they seek the Court’s guidance on the issues below.

## ZUFFA'S STATEMENT

14 The motions for Class Certification and Summary Judgment both rely on a variety of  
15 documents and materials describing and referring to Zuffa's confidential trade secrets, contractual  
16 information, financial information, and the confidential information of third parties. Declaration  
17 of Stacey K. Grigsby in Support of Zuffa's Statement in Joint Motion ¶¶ 3-8. Although "court  
18 proceedings and records are presumptively open to the public," this right "may give way upon a  
19 convincing showing that the testimony or document contains 'sources of business information  
20 that might harm a litigant's competitive standing.'" *Saint Alphonsus Med. Ct. - Nampa, Inc. v. St.*  
21 *Luke's Health Sys., Ltd.*, No. 1:12-CV-00560-BLW, ECF No. 209 at 2-3 (D. Idaho Sept. 17,  
22 2013) (citing *Perry v. City and County of San Francisco*, 2011 WL 2419868 (9th Cir. Apr. 27,  
23 2011)) (quoting *Nixon v. Warner Comms., Inc.*, 435 U.S. 589, 598 (1978)). To that end, "case  
24 law holds that compelling reasons exist to seal trial material when the material contains sensitive  
25 trade secrets that could cause substantial harm if publically disseminated." *Saint Alphonsus Med.*  
26 *Ctr. - Nampa, Inc. v. St. Luke's Health Sys., Ltd.*, No. 1:12-CV-00560-BLW, 2013 WL 5883736,  
27 at \*1 (D. Idaho Oct. 18, 2013) (citing *Kamakana v. City & County of Honolulu*, 447 F.3d 1172,  
28 1178-80 (9th Cir. 2006)).

1           Confidentiality is of a particular concern here as Zuffa has reason to believe that members  
2 of the public, including members of the media following this case, intend to be present at the  
3 hearing. Zuffa therefore requests that for all materials designated confidential or highly  
4 confidential, the Parties observe the following procedures to address trade secret and  
5 confidentiality concerns:

6           1. The parties will only use hard copies of any slide decks, demonstrative exhibits, and other  
7 materials (“Materials”);  
8  
9           2. Each Party will provide opposing counsel with hard copies of any Materials immediately  
10 prior to the hearing.  
11  
12           3. The parties will refrain from disclosing information that has been filed under seal,  
13 including specifically exact revenue, wage share, cost, compensation, and related financial  
14 information. The parties may use relative terms such as “higher,” “lower,” and similar  
15 terms to compare such financial information but will not disclose specific numerical  
16 figures.  
17  
18           4. Other than in any portion of the hearing closed to the public, the parties will refrain from  
19 disclosing information from third parties that was designated confidential and filed under  
20 seal or designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”  
21  
22  
23  
24  
25  
26  
27  
28

16           These measures are reasonable as they maintain the confidentiality of these materials while  
17 still permitting the public to be present in the courtroom to hear arguments. Zuffa respectfully  
18 requests that the Court order that Zuffa’s proposed measures be put in place.

## PLAINTIFFS' STATEMENT

2 Plaintiffs disagree that any motion is necessary or appropriate to address this  
3 administrative issue. Despite the fact that the December 14 hearing had been rescheduled at  
4 Zuffa's request, pursuant to a written request of the parties on November 8, 2018, Zuffa waited  
5 until Tuesday, December 11, 2018, just a few days prior to the hearing to raise the issue. To the  
6 extent Zuffa believed that a motion was appropriate, Zuffa should have timely raised the issue for  
7 briefing. They did not. In any event, given Zuffa's insistence, Plaintiffs are compelled to  
8 respond.

9 Plaintiffs have filed motions opposing Zuffa's motions to seal and disagree that Zuffa's  
10 materials should be sealed. ECF Nos. 558, 581, 604, 619. The right of the named Plaintiffs, the  
11 Class members, the public, and the press to access and evaluate the evidence regarding the  
12 important issues at stake in this litigation outweighs any confidentiality interest Zuffa may assert,  
13 and mandates a full public airing of the arguments and supporting evidence to be presented at the  
14 hearing, with certain narrowly tailored exceptions as set forth below. *See Kamakana v. City &*  
15 *Cty. Of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006). That is particularly so given Zuffa's  
16 selective public disclosure of the very types of materials that it now argues warrant additional  
17 protections. Regarding Zuffa's specific requests above, Plaintiffs respond:

18 1. Plaintiffs will agree to use hard copies of any demonstrative exhibits.

19 2. Plaintiffs will distribute hard copies of such demonstrative exhibits to the Parties and the Court to the extent used.

1       3. Plaintiffs do not and cannot agree to censor their arguments in real time and with virtually  
 2       no notice. Plaintiffs must be permitted to freely and fully present their arguments  
 3       regarding the substantial record at issue. Plaintiffs do not, however, agree to seal the  
 4       courtroom as the right of the Class, the public, and the press to evaluate these arguments  
 5       outweighs the purported confidentiality concerns (which have been disputed in any event).  
 6       Indeed, wage share does not contain exact revenue or compensation information, nor can  
 7       such information be inferred therefrom. Even if such information could be gleaned from  
 8       wage share—it cannot—Zuffa has failed to demonstrate how it would be harmed by its  
 9       disclosure. Indeed, Zuffa frequently discloses its purportedly confidential financial  
 10      information when it suits its purposes to do so, *as it did again yesterday*. See Kevin Iole,  
 11      *Dana White escalates feud with Oscar De La Hoya: 'He's a liar and a phony'*,  
 12      Yahoo.com, Dec. 12, 2018, available at <https://sports.yahoo.com/dana-white-escalates-feud-oscar-de-la-hoya-hes-liar-phony-043645478.html> (reporting that Dana White  
 13      disclosed compensation information—including individual bouts and annual payments—for former UFC fighters Chuck Liddell, Tito Ortiz, and Gleison Tibau, as well as pay-per-view sales numbers and total fighter compensation information, in response to comments  
 14      from Golden Boy Promotions CEO Oscar De La Hoya, about whom White said, “The guy  
 15      wants to act like he’s my competitor [promoting MMA] . . . . He knows nothing about  
 16      this sport.”). Thus, Zuffa has no demonstrated interest in preventing disclosure of its  
 17      wage share, revenue, compensation, or cost information, particularly given that the  
 18      information generally covers the Class Period of December 2010 to June 2017 and is  
 19      therefore too old to be of the significance Zuffa ascribes to it. Regardless, wage share lies  
 20      at the very core of Plaintiffs’ case-in-chief, as it provides the appropriate, accurate  
 21      measure of Zuffa’s monopsony power and Plaintiffs’ damages. The public right of access  
 22      to this key information outweighs any alleged confidentiality interest Zuffa may assert.  
 23      Plaintiffs do not agree to any limits on how they may refer to Zuffa’s relevant wage share  
 24      and financial information.

15       4. Plaintiffs do not believe any portion of the hearing should be closed to the public.  
 16       Plaintiffs agree to take reasonable efforts not to publicly disclose any recent specific  
 17       financial information from third party MMA promoters that was designated “HIGHLY  
 18       CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1 Dated: December 13, 2018

2 **JOSEPH SAVERI LAW FIRM, INC.**

3 By: /s/ Kevin E. Rayhill

4 Joseph R. Saveri (State Bar No. 130064)  
5 Joshua P. Davis (admitted *pro hac vice*)  
6 Kevin E. Rayhill (admitted *pro hac vice*)  
7 Jiamin Chen (admitted *pro hac vice*)  
8 601 California Street, Suite 1000  
9 San Francisco, California 94108  
10 Phone: (415) 500-6800/Fax: (415) 395-9940  
11 jsaveri@saverilawfirm.com  
12 jdavis@saverilawfirm.com  
13 krayhill@saverilawfirm.com  
14 jchen@saverilawfirm.com

15 *Co-Lead Counsel for the Classes and*  
16 *Attorneys for Individual and Representative*  
17 *Plaintiffs Cung Le, Nathan Quarry, Jon*  
18 *Fitch, Luis Javier Vazquez, Brandon Vera,*  
19 *and Kyle Kingsbury*

20 **BERGER MONTAGUE PC**

21 Eric L. Cramer (admitted *pro hac vice*)  
22 Michael Dell'Angelo (admitted *pro hac vice*)  
23 Patrick F. Madden (admitted *pro hac vice*)  
24 Mark R. Suter (admitted *pro hac vice*)  
25 1818 Market Street, Suite 3600  
26 Philadelphia, Pennsylvania 19103  
27 Phone: (215) 875-3000/Fax: (215) 875-4604  
28 ecramer@bm.net  
mdellangelo@bm.net  
pmadden@bm.net  
msuter@bm.net

29 *Co-Lead Counsel for the Classes and*  
30 *Attorneys for Individual and Representative*  
31 *Plaintiffs Cung Le, Nathan Quarry, Jon*  
32 *Fitch, Luis Javier Vazquez, Brandon Vera,*  
33 *and Kyle Kingsbury*

1 Dated: December 13, 2018

2 **BOIES SCHILLER FLEXNER LLP**

3 By: /s/ Stacey K. Grigsby

4 William A. Isaacson (admitted *pro hac vice*)  
5 Stacey K. Grigsby (admitted *pro hac vice*)  
6 Nicholas A. Widnell (admitted *pro hac vice*)  
7 1401 New York Ave, NW  
8 Washington, D.C. 20005  
9 Phone: (202) 237-2727/Fax: (202) 237-6131  
10 wisaacson@bsflp.com  
11 sgrigsby@bsflp.com  
12 nwidnell@bsflp.com

13 *Attorneys for Defendant Zuffa, LLC, d/b/a*  
14 *Ultimate Fighting Championship and UFC*

15 **CAMPBELL & WILLIAMS**

16 Donald J. Campbell (State Bar No. 1216)  
17 J. Colby Williams (State Bar No. 5549)  
18 700 South 7th Street  
19 Las Vegas, Nevada 89101  
20 Phone: (702) 382-5222/Fax: (702) 382-0540  
21 djc@campbellandwilliams.com  
22 jcw@campbellandwilliams.com

23 *Attorneys for Defendant Zuffa, LLC, d/b/a*  
24 *Ultimate Fighting Championship and UFC*

25 **BOIES SCHILLER FLEXNER LLP**

26 Richard J. Pocker (State Bar No. 3568)  
27 300 South Fourth Street, Suite 800  
28 Las Vegas, Nevada 89101  
29 Phone: (702) 382-7300/Fax: (702) 382-2755  
30 rpocker@bsflp.com

31 *Attorneys for Defendant Zuffa, LLC, d/b/a*  
32 *Ultimate Fighting Championship and UFC*

1           **COHEN MILSTEIN SELLERS  
& TOLL, PLLC**

2           Benjamin D. Brown (admitted *pro hac vice*)  
3           Richard A. Koffman (admitted *pro hac vice*)  
4           Daniel H. Silverman (admitted *pro hac vice*)  
5           1100 New York Ave., N.W.,  
6           Suite 500, East Tower  
7           Washington, D.C. 20005  
8           Phone: (202) 408-4600/Fax: (202) 408 4699  
9           bbrown@cohenmilstein.com  
10           rkoffman@cohenmilstein.com  
11           dsilverman@cohenmilstein.com

12           *Co-Lead Counsel for the Classes and  
13           Attorneys for Individual and Representative  
14           Plaintiffs Cung Le, Nathan Quarry, Jon Fitch,  
15           Luis Javier Vazquez, Brandon Vera, and Kyle  
16           Kingsbury*

17           **RADICE LAW FIRM, P.C.**

18           John D. Radice (admitted *pro hac vice*)  
19           34 Sunset Blvd  
20           Long Beach, NJ 08008  
21           jradice@radicelawfirm.com

22           *Attorneys for Plaintiffs*

23           **WOLF, RIFKIN, SHAPIRO,  
24           SCHULMAN & RABKIN, LLP**

25           Don Springmeyer  
26           Nevada Bar No. 1021  
27           Bradley S. Schrager  
28           Nevada Bar No. 10217  
1           Justin C. Jones  
2           Nevada Bar No. 8519  
3           3556 E. Russell Road, Second Floor  
4           Las Vegas, Nevada 89120  
5           (702) 341-5200/Fax: (702) 341-5300  
6           dspringmeyer@wrslawyers.com  
7           bschrager@wrslawyers.com  
8           jjones@wrslawyers.com

9           *Liaison Counsel for the Classes and Attorneys  
10           for Individual and Representative Plaintiffs  
11           Cung Le, Nathan Quarry, Jon Fitch, Luis  
12           Javier Vazquez, Brandon Vera, and Kyle  
13           Kingsbury*

1      **WARNER ANGLE HALLAM JACKSON  
& FORMANEK PLC**

2      Robert C. Maysey (admitted *pro hac vice*)  
3      Jerome K. Elwell (admitted *pro hac vice*)  
4      2555 E. Camelback Road, Suite 800  
5      Phoenix, Arizona 85016  
6      Phone: (602) 264-7101/Fax: (602) 234-0419  
7      rmaysey@warnerangle.com  
8      jelwell@warnerangle.com

9      *Counsel for the Classes and Attorneys for  
10     Individual and Representative Plaintiffs Cung  
11     Le, Nathan Quarry, Jon Fitch, Luis Javier  
12     Vazquez, Brandon Vera, and Kyle Kingsbury*

13     **LAW OFFICE OF FREDERICK S.  
14     SCHWARTZ**

15     Frederick S. Schwartz (admitted *pro hac vice*)  
16     15303 Ventura Boulevard, #1040  
17     Sherman Oaks, California 91403  
18     Phone: (818) 986-2407/Fax: (818) 995-4124  
19     fred@fredschwartzlaw.com

20     *Attorneys for Plaintiffs*

21     **SPECTOR ROSEMAN KODROFF &  
22     WILLIS, P.C.**

23     Jeffrey J. Corrigan (admitted *pro hac vice*)  
24     William G. Caldes (admitted *pro hac vice*)  
25     1818 Market Street, Suite 2500  
26     Philadelphia, Pennsylvania 19103  
27     Phone: (215) 496-0300/Fax: (215) 496-6611  
28     jcorrigan@srgw-law.com  
      wcaldes@srgw-law.com

29     *Attorneys for Plaintiffs*

## ATTESTATION OF FILER

The signatories to this document are myself and Kevin Rayhill, and I have obtained Mr. Rayhill's concurrence to file this document on his behalf.

Dated: December 13, 2018

/s/ Stacey K. Grigsby

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Joint Motion Regarding Protective Measures for the Class Certification and Summary Judgment Hearing was served on December 13, 2018 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Brent K. Nakamura

Brent K. Nakamura